



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff

v.

J.M.S. Associate Marketing, LLC, Josette  
M Selbert, Tele Transform, Vivid Hear, and  
John Doe 1-10

Defendants.

Case No.:

ORIGINAL COMPLAINT FOR A  
CIVIL CASE AND INJUNCTIVE  
RELIEF

Jury Trial: ☒ Yes ☐ No

**I. THE PARTIES TO THIS COMPLAINT**

**A. Plaintiff**

Name	Nathen Barton
Street Address	4618 NW 11 <sup>th</sup> Cir
City and County	Camas, Clark County
State and Zip Code	Washington 98607
Telephone Number	(718) 710-5784

**B. Defendant(s)**

Defendant No. 1

1 Name J.M.S. Associate Marketing, LLC

2 Job or Title (*if known*)

3 Street Address 551 S. Apollo Boulevard Suite 204

4 City and County Melbourne, Brevard County

5 State and Zip Code FL, 32901

6 Telephone Number (855) 530-4327

7 Defendant No. 2

8 Name Josette M Selbert

9 Job or Title (*if known*) General Manager and Owner

10 Street Address 551 S. Apollo Boulevard Suite 204

11 City and County Melbourne, Brevard County

12 State and Zip Code FL, 32901

13 Telephone Number (855) 530-4327

14 Defendant No. 3

15 Name Tele Transform

16 Job or Title (*if known*)

17 Street Address 551 S. Apollo Boulevard Suite 204

18 City and County Melbourne, Brevard County

19 State and Zip Code FL, 32901

20 Telephone Number (855) 530-4327

21 Defendant No. 4

22 Name Vivid Hear

23 Job or Title (*if known*)

24 Street Address 551 S. Apollo Boulevard Suite 204

City and County Melbourne, Brevard County

State and Zip Code FL, 32901

Telephone Number (855) 530-4327

## II. BASIS FOR JURISDICTION

Plaintiff Nathen Barton is a natural person and full-time resident of Clark County, Washington. All the acts alleged in this complaint occurred in Clark County, Washington State, during the year 2021.

Jurisdiction in this court is correct because of where Plaintiff resides, and his residence is a nexus where Plaintiff suffered personal injury and invasion of privacy at the hands of the Defendants. Defendants were or should have been aware they were reaching into the Western area of Washington State by dialing a 360 area code number.

Plaintiff is suing in part under federal statute the Telephone Consumer Protection Act of 1991, known as the TCPA, giving rise to a lawsuit that may be brought in Federal Court pursuant to *Mims v. Arrow Fin. Services, LLC*.

## III. STATEMENT OF CLAIM

On July 9, 2020, Plaintiff registered and paid for a Washington State (360) telephone area code cellular number to be primarily used by his minor child. It is a Protected Computer as it is used in a manner that affects interstate or foreign commerce or communication. The phone is on a very limited service plan, with each call, text, or data usage subtracting from a fixed amount of each available each month.

This (360) XXX XXXX number was registered on the FTC *do-not-call* registry more than 31 days before April 19, 2021, and all the phone calls alleged in this complaint were made to this 360-area code number.

J.M.S Associate Marketing, LLC ("JMS") is a Florida company that operates as a call center selling products over the phone. Products such as massage chairs and hearing aids and magazine subscriptions. Unfortunately, JMS seems to sell products under fictitious business names. The massage chairs are marketed under the fictitious name 'Tele Transform' and the

1 hearing aids are marketing under the fictitious name ‘Vivid Hear’ (“Vivid”) with website  
2 *vividhear.com*.

3 These fictitious business names do not appear to be registered as legal entities in the State  
4 of Florida, even though JMS operates out of Melbourne, Florida.

5 The ‘JMS’ of J.M.S Associate Marketing, LLC would appear to stand for the general  
6 manager, registered agent, and presumed owner of JMS, Josette M Selbert (“Selbert”). She  
7 describes her own job position there as including:

8 “Recruit, interview, and train sales staff for an outbound Call Center. Manage the daily  
9 operations of a telephone sales room.”<sup>1</sup>

10 It appears that Selbert is the person responsible for illegally telemarketing the massage  
11 chairs and hearing aids. Plaintiff has direct knowledge of JMS telemarketing practices – he has  
12 been the recipient of six JMS telemarketing phone calls.

13 Vivid’s telemarketing calls and *vividhear.com* do not mention who owns or operates this  
14 enterprise, and only a trail of breadcrumbs connects JMS and Vivid/Tele Transform. First, both  
15 JMS and Vivid list the same physical address:

16 551 S Apollo Blvd Ste 204  
17 Melbourne, FL 32901

18 Second, a LinkedIn profile for a Jennifer Monroe<sup>2</sup> lists a two-month stint working for  
19 “JMS Marketing LLC” in Melbourne Florida with the job description:

20 “Received Outbound and Inbound calls for Vivid Hear for sale of Hearing Aids; Maintain  
21 positive attitude and confidence during escalations; Process individual orders accurately  
22 and according to the customers preferences”

23 <sup>1</sup> Josette Selbert’s current LinkedIn profile job description

24 <sup>2</sup> <https://www.linkedin.com/in/jennifermmonroe-123/>

1 Third, the job review page on indeed.com for “JMS Marketing”<sup>3</sup> mentions a Melbourne  
 2 Florida location, and a current employee (as of January 8, 2020) reported selling products to  
 3 people with hearing issues:

4 “They do off spiffs for if you get a sale but they get their leads from surveys that these  
 5 old people take for money and they auto dial them even if they dont (sic) have hearing  
 6 issues. On top of that they also keep the customers in the auto dial rotation even if they  
 say do not call me.”

7 Another (former) employee wrote on the same Indeed.com page, dated September 13,  
 2019:

8 “JMS Marketing CSR - Customer Service Representative Review - It is a scam. Trying to  
 9 rip off old people on hearing aids. This place should be shut down.”

#### 10 **Tele Transform**

11 Tele Transform appears to only exist in the corridors of JMS and in their telemarketing  
 12 robocalls. Plaintiff has received two telemarketing phone calls where the pre-recorded or  
 13 artificially generated portion of the call says the entity behind the call is “Tele Transform” but  
 14 later the live agent on the same call identifies the entity behind the call as “Vivid Hear”. It does  
 15 not appear that Tele Transform has a website or that the name is registered as a *doing-business-*  
 16 *as*, or as a legal entity.

17 JMS employees and company resources are being used to telemarket products under the  
 18 fictitious company names of Tele Transform and Vivid Hear / *vividhear.com*, under the guidance  
 19 and direction of Selbert.

20 Plaintiff does not and never had an established business relationship with any Defendant  
 21 in this action. The Defendants never had an invitation or consent to telephone solicit Plaintiff.

#### 22 **Unsolicited Telemarketing Call #1**

23  
 24 <sup>3</sup> <https://www.indeed.com/cmp/Jms-Marketing/reviews>

1 On or about 1:20PM, April 19, 2021, Plaintiff received a phone call from an automated  
2 dialing and announcing device using an artificial or recorded voice, seemingly from 360 245  
3 2229. The pre-recorded or artificial portion of the call was a man's voice, he said he was calling  
4 from "Tele Transform", and his message was encouraging the purchase of a body massage chair.

5 **Unsolicited Telemarketing Call #2**

6 On or about May 27, 2021, Plaintiff missed a call seemingly from 360 206 5353, and  
7 called that number back shortly after. The voice that answered the phone said "Thank you for  
8 calling Tele Transform. This is Leo on a recorded line." Plaintiff believes that the Defendants  
9 dialed Plaintiff's cell number on this occasion for the purpose of encouraging the purchase of  
10 goods or services.

11 **Unsolicited Telemarketing Call #3**

12 On or about May 28, 2021, Plaintiff received a phone call from an automated dialing and  
13 announcing device using an artificial or recorded voice, seemingly from 360 206 5512. The pre-  
14 recorded or artificial portion of the call was a man's voice, he said he was calling from "Tele  
15 Transform", and his message was encouraging the purchase of a body massage chair.

16 At one minute and 43 seconds into the call, Plaintiff asked to be put on their *do-not-call*  
17 *list*. The voice paused, said "Un-huh, that's ok", and hung up at the two minute mark.

18 **Unsolicited Telemarketing Call #4**

19 On or about June 1, 2021, Plaintiff received a phone call from an automated dialing and  
20 announcing device using an artificial or recorded voice, seemingly from 360 206 5370. The  
21 artificial or pre-recorded portion of the call was in a man's voice. The caller started the message  
22 with "Hi this is Leo, I'm a hearing administrator calling on a recorded line, how are you doing  
23 today?" Plaintiff responded with "uh good, what is a hearing administrator?" After a long  
24 pause, the Defendants hung up.

**Unsolicited Telemarketing Call #5**

On or about June 4, 2021, Plaintiff received a phone call from an automated dialing and announcing device using an artificial or recorded voice, seemingly from 360 206 5432. The artificial or pre-recorded portion of the call was in a man's voice. The caller started the message with "Hi this is Leo, I'm a hearing administrator calling on a recorded line, how are you doing today?"

Later in the call, the man's voice said "now, I'm with Tele Transform" and then his message went on to encourage the purchase of hearing aids. The message included the detail "the weather here in Florida is pretty nice year round" and then the call transitioned to a lady live agent. She identified herself as a "hearing specialist with Vivid Hear". She directed Plaintiff to the website *vividhear.com* and she encouraged Plaintiff to purchase hearing aids.

**Unsolicited Telemarketing Call #6**

On or about June 9, 2021, Plaintiff missed a call seemingly from 360 206 5367, and called that number back shortly after. The voice that answered the phone said "Thank you for calling Tele Transform. This is Ashley on a recorded line." After about a minute and a half, the call was handed off to a live agent who identified herself as a "hearing specialist with Vivid Hear". Plaintiff believes that the Defendants dialed Plaintiff's cell number on this occasion for the purpose of encouraging the purchase of goods or service

**Defendants are Unlicensed Commercial Telephone Solicitors**

RCW 19.158.020 says:

(1) A "commercial telephone solicitor" is any person who engages in commercial telephone solicitation

(2) "Commercial telephone solicitation" means:



(a) An unsolicited telephone call to a person initiated by a salesperson and conversation for the purpose of inducing the person to purchase or invest in property, goods, or services;

RCW 19.158.050(1) says in part:

“In order to maintain or defend a lawsuit or do any business in this state, a commercial telephone solicitor must be registered with the department of licensing.”

Although RCW 19.158.050(3) says “The department of licensing shall issue a registration number to the commercial telephone solicitor.”, in practice this Commercial Telephone Solicitor “registration number” appears as an endorsement on the business license issued by The Washington State Department of Revenue.

None of the Selbert, JMS, Vivid, and Tele-Transform names are registered to do any business in Washington State, thus do not have this endorsement on their not-existing Washington State business license, and they acted as unlicensed commercial telephone solicitors.

#### **Defendants are Annoying the Public**

No one in Plaintiff’s house needs hearing aids, and this phone is registered on the FTC *do-not-call* list to maintain their privacy and tranquility. As much as Plaintiff’s children would undoubtedly love a full body massage chair, Plaintiff is not in the market for that either.

These Defendants waste Plaintiff’s time with each phone call, and distract the family from their activities.

#### **IV. RELIEF**

##### **Federal Law**

Plaintiffs phone number at issue was at all relevant times registered on the FTC *do-not-call* list more than 30 days before the alleged solicitations. Plaintiff does not have any relationship with the Defendants by which they could legally phone solicit Plaintiff for any reason.



1  
2 Defendants violated the TCPA 47 U.S.C. 227(c)(5) by soliciting Plaintiff six (6) times  
3 without his consent on his cell phone with phone number (972) XXX XXXX while he was  
4 registered on the FTC *do-not-call* list.

5 Defendants violated 47 U.S.C. 227(b) four (4) times by calling Plaintiff's cellular  
6 telephone number four (4) times without consent, while using an artificial or prerecorded voice.

7 **Washington State Law**

8 **RCW 19.158**

9 Defendants were not registered as Commercial Telephone Solicitors with the Washington  
10 State Department of Licensing when any of the solicitation calls were placed to Plaintiff, in  
11 violation of RCW 19.158.050(1).

12 Defendants violated Washington State RCW 19.158.150 four (4) times by soliciting  
13 Plaintiff on his cell phone while they were not registered on with the Washington State  
14 Department of Licensing as Commercial Telephone Solicitors, or while working on behalf of an  
15 unregistered Commercial Telephone Solicitor.

16 Washington State RCW 19.158.110(1) says:

17 Within the first minute of the telephone call, a commercial telephone solicitor or  
18 salesperson shall:

19 (a) Identify himself or herself, the company on whose behalf the solicitation is  
20 being made, the property, goods, or services being sold;

21 The Defendants did not identify a legitimate company name in the first 60 seconds of the  
22 four calls Defendants initiated to Plaintiff, and Plaintiff answered.

23 Washington State RCW 19.158.110(2) says:

24 If at any time during the telephone contact, the purchaser states or indicates that he or she

1 does not wish to be called again by the commercial telephone solicitor or wants to have  
2 his or her name and individual telephone number removed from the telephone lists used  
by the commercial telephone solicitor:

3 (a) The commercial telephone solicitor shall not make any additional commercial  
4 telephone solicitation of the called party at that telephone number within a period of at  
least one year;

5 The Defendants called Plaintiff twice more within a period of one year after Plaintiff  
6 asked for Plaintiff's number to be removed from the telephone lists used by Defendants.

7 **RCW 80.36.390(2)**

8 Washington State RCW 80.36.390(2) says

9 A person making a telephone solicitation must identify him or herself and the company or  
10 organization on whose behalf the solicitation is being made and the purpose of the call  
within the first thirty seconds of the telephone call.

11 In four (4) solicitation calls the Defendants failed to identify the company behind the solicitation  
12 within the first 30 seconds of the phone calls.

13 **RCW 80.36.390(3)**

14 Washington State RCW 80.36.390(3) says:

15 If, at any time during the telephone contact, the called party states or indicates that he or  
16 she does not wish to be called again by the company or organization or wants to have his  
or her name and individual telephone number removed from the telephone lists used by  
17 the company or organization making the telephone solicitation, then:

18 (a) The company or organization shall not make any additional telephone solicitation of  
19 the called party at that telephone number within a period of at least one year;

20 On May 28, 2021, Plaintiff asked Defendants to not be called again, and Defendants  
21 called Plaintiff two (2) more times after this request.

22 **RCW 80.36.400**

23 Washington State RCW 80.36.400(2) states:

1 “No person may use an automatic dialing and announcing device for purposes of  
2 commercial solicitation. This section applies to all commercial solicitation intended to be  
received by telephone customers within the state.”

3 Defendants violated Washington State RCW 80.36.400(2) four (4) times by calling  
4 Plaintiff’s cellular telephone number four (4) times without consent, while using an automatic  
5 dialing and announcing device for commercial solicitation.

6 RCW 80.36.400 defines “Commercial solicitation means the unsolicited initiation of a  
7 telephone conversation for the purpose of encouraging a person to purchase property, goods, or  
8 services.”

### 9 **Treble Damages**

10 Plaintiff believes the record shows that Defendants’ violations of the law were willful or  
11 knowing. Their own employee reported:

12 “they get their leads from surveys that these old people take for money and they auto dial  
13 them even if they dont (sic) have hearing issues. On top of that they also keep the  
customers in the auto dial rotation even if they say do not call me.”

14 Plaintiff can attest to half of this – Plaintiff never filled out a survey, but he did ask the  
15 Defendants stop calling him, to no avail. Therefore, Plaintiff asks for treble damages under  
16 TCPA 47 U.S.C. 227(c)(5), TCPA 47 U.S.C. 227(b)(3), and the presumption that violations of  
17 Washington State RCW 19.158 and RCW 80.36.400 triple damages under the Washington State  
18 Unfair Business Practices Act RCW 19.86.

### 19 **All other Possible Damages**

20 Plaintiff prays for all possible damages, in law and in equity, statutory, real, and punitive,  
21 that he might be entitled too. Such damages could be but are not limited to court costs and  
22 attorney fees.

### 23 **Injunctive Relief**

1 TCPA 47 U.S.C. 227(b)(3)(A) and 47 U.S.C. 227(c)(5)(A) allows “an action based on a  
2 violation of the regulations prescribed under this subsection to enjoin such violation”

3 Washington State RCW 80.36.390(6) says:

4 A person aggrieved by repeated violations of this section may bring a civil action  
5 in superior court to enjoin future violations, to recover damages, or both.

6 Plaintiff is not unique – he simply had the misfortune to be targeted by Defendants’ mass  
7 calling machine. It is reasonable to believe that Defendants have done this many times in the  
8 past and will continue harming the residents of this State and other States in the future.

9 Plaintiff asks this Court to enjoin the Defendants from further violations of State and  
10 Federal telemarketing laws.

#### 11 V. CERTIFICATION AND CLOSING

12 Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my  
13 knowledge, information, and belief that this complaint: (1) is not being presented for an improper  
14 purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;  
15 (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or  
16 reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so  
17 identified, will likely have evidentiary support after a reasonable opportunity for further  
18 investigation or discovery; and (4) the complaint otherwise complies with the requirements of  
19 Rule 11.

20 I agree to provide the Clerk's Office with any changes to my address where case-related  
21 papers may be served. I understand that my failure to keep a current address on file with the  
22 Clerk's Office may result in the dismissal of my case.

23 Date of signing:

7/12/2021

24 Signature of Plaintiff



Printed Name of Plaintiff

Nathan Barton